

In the High Court of Judicature at Madras

Dated : 13.11.2007

Coram :-

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.1416 of 2007

Commissioner of Income Tax
Tamil Nadu-I, Madras. ... Appellant

Vs

M/s.Kailash Triple Sterlized Water (Chennai)
Private Limited, No.125, Old Mahabalipuram
Road, Sholingnallur, Chennai - 600 119 ... Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 30.11.2006 made in I.T.A.No.975/Mds/2005 for the assessment year 2001-2002 against the order of the Commissioner of Income-Tax (Appeals-III), Chennai-34, dt. 4.1.2005 in ITA No.354/2004-05/A.III against the order of the Additional Commissioner of Income Tax Company Range-II, Chennai-34 dt.28.7.2004 in AABCK2757N.

For Appellant : Mr.J.Narayanaswamy

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The appeals is filed against the order of the Income Tax Appellate Tribunal Madras 'B' Bench dated 30.11.2006 made in I.T.A.No.975/Mds/2005 for the assessment year 2001-2002.

2. The brief facts of the case as culled out from the statement of facts stated in the memorandum of appeal are as follows:

The assessee company is the manufacturer and seller of mineral water and has furnished the return of income for the assessment year 2001-2002 on 22.10.2001 admitting a loss of Rs.13,97,507/-. During the course of assessment proceedings, from the books of accounts produced, it was noticed that the receipt of cash loan

aggregating Rs.13 lakhs on various dates during the financial year 2000-2001 from Prasanna Agencies Proprietrix and Mrs.R.Dhanalakshmi. The assessing officer was of the view that there was violation of provisions of Section 269SS of the Income-tax Act in accepting the loan exceeding Rs.20,000/- otherwise than of account payee cheque or account payee draft. Hence, the assessing officer initiated the penal proceedings under Section 271D of the Income-tax Act, 1961. Against that order imposing penalty, the assessee preferred appeal before the Commissioner of Income-tax (Appeals) and the Commissioner of Income-tax (Appeals) deleted the penalty and allowed the assessee's appeal. The revenue preferred an appeal before the Income-tax Appellate Tribunal and the Tribunal has confirmed the order of the Commissioner of Income-tax (Appeals). The correctness of the same is now put in issue before this Court by formulating the following question of law.

1. Whether on the facts and in the circumstances of the case the Income-tax Appellate Tribunal is right in law in deleting the penalty under Section 271D of the Income-tax Act, even though the assessee violated the provisions under Section 269SS of the Income-tax Act, 1961?

3. We heard the argument of the learned counsel for the revenue and perused the materials on record.

4. The Tribunal has given a finding that it could be seen from the orders of lower authorities that M/s.Prasanna Agencies was the sole distributor of the assessee company for marketing its product i.e., mineral water. During the course of sale of that product, the assessee had made cash payments on various dates narrated in penalty order from 27.9.2000 to 15.11.2002 varying from Rs.80,000/- to Rs.10,000/-. In view of that, Prasanna Agencies had made payment to the tune of Rs.10,13,000/-. R.Dhanalakshmi who was one of the Directors of the assessee company was the sole proprietor of M/s.Prasanna Agencies. It was the claim of the assessee before the lower authorities that the cash was received on account of sale as recorded in the books of accounts. The assessee had shown the same as trade credit. From the above, it is clear that the revenue has failed to establish that the amount received by the assessee was loan deposit within the meaning of Section 269SS.

5. The Tribunal has also taken note of the decision of this Court in the case of COMMISSIONER OF INCOME-TAX VS. IDHAYAM PUBLICATIONS LIMJITED reported in (2006) 285 ITR 221, wherein this Court has held as follows:

"We heard the arguments of learned counsel for the Revenue. We have perused the materials available in record. Admittedly Mr.S.V.S.Manian was one of the Directors. Therefore, the order of the lower authority clearly shows that there was a running current account in the books of account of the assessee in the name of Mr.S.V.S.Manian. Mr.S.V.S.Manian used to pay the money in the current account and used to withdraw the money also from the current account. The Revenue should establish that what was received by the assessee is a loan of deposit within the meaning of section 269SS. The deposit and the withdrawal of the money from the current account not be considered as a loan or advance. Further it was also found that the assessee filed a letter dated September 29, 1997, and in that letter he explained that the amount received from M/s.S.V.S.Manian had been shown as "unsecured loan from directors" in the balance-sheet. As per the companies Act, under the Companies (Acceptance of Deposits) Rules, 1975, under rule 2(b)(ix), deposit does not include any amount received from a director or a shareholder of a private limited company. Therefore, the transaction between the appellant and the director cum shareholder is not a loan or deposit and it is only a current account in nature and no interest is being charged for the above transaction.

In the foregoing inclusions, we are of the view that since the said transaction does not fall within the meaning of loan or advance, there is no violation of section 269SS of the Income-tax Act. We find no error in the order of the Tribunal and the same requires no interference. Hence no substantial question of law arises for consideration of this Court. Accordingly we dismiss the above tax case."

6. The above said judgment is applicable to the facts of the present case in all force. In the case on hand, it was not the case of the revenue that the assessee received cash as loan or deposit within the meaning of Section 269SS. The deposit and the withdrawal of the money from the current account not be considered as a loan or advance. A factual finding has been recorded by the Tribunal that the assessee claimed that the cash was received on account of sale and the same was shown as trade credit.

7. For the fore-going reasons, the appeal is dismissed as no question of law, much less a substantial question of law is involved.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Asst.Registrar, Income-tax Appellate Tribunal, Chennai.
2. The Commissioner of Income-tax (Appeals) - III Chennai- 600 034.
3. The Addl.Commissioner of Income-tax Company Range-II, Chennai-34.

4.The Commissioner of Income Tax,
Tamil Nadu-I, Madras.

+1cc to M/s.Pushya Sitaraman, Advocate Sr 67586

SJ (CO)

km/23.11.

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